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The Confirmation of Tort Liability in Universities —from the perspective of security obligations

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Abstract

This thesis borrows ideas from research achievements on theory of security obligations of two legal systems of Anglo-America and mainland China with the aim of introducing this theory into responsibility confirmation of torts in universities. On this basis, this thesis systematically explores the responsibilities that should be borne by universities for campus torts, and proposes specific advices on the improvement of the existing legislation and solution of tort cases in universities.

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1. Concept of security obligation and legislative status at home and abroad

Campus tort refers to students suffering from personal injury and property damage during the period of being educated, managed and protected in school. In recent years, universities have witnessed an increasing number of campus torts and law disputes caused by torts. China's current laws involving campus torts are as follows: General Principles of the Civil Law, Judicial Interpretation of Supreme People's Court on Compensation for Personal Injury, Tort Liability Law, and Measures for Handling Student Injury Accidents etc. In these laws, the mentioned schools are defined as universities, but students are basically defined as juveniles. In view of the fact that most university students are adults who have complete civil capacity. Legislators have not made special regulations about responsibilities to be borne by schools. This paper, based on the development of security obligation theories, defines universities as public places. As for whether schools shall bear responsibility for tort cases happened on campus, the security obligations will be regarded as the key point.

1.1. Establishment of security obligation theory

Security obligation derives from communication security obligations theory developing from case laws¹ by German court. The academic circle in Germany defines communication security obligations theory as necessary and expected precautionary measures taken by people in continuous dangers based on actual conditions so as to protect the third party to prevent from damage [1] [2].

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1.2. Establishment of security obligations system in our country

Chinese scholars take the theory of duty of care from Germany as reference and introduce security obligation theory in the 6th clause of Interpretation of the Supreme People's Court of some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury, which formally establishes the security obligation law system in our law. The tort liability about violation of security obligation regulated by newly implemented Tort Liability Law is the regulation mainly involving responsibility of administrators of public places and group activities organizers and represents regulation of the 37th clause. Although this regulation only involves with two areas such as public places and group activities, it has the meaning as some general clause has, which aims at resolving the nonfeasance of security obligor and the damages caused by it. According to clause 38, 39 and 40 of Tort Liability Law, kindergarten, schools and educational institutions have the property of public places². Based on this point of view, there is internal connection between security obligation and campus tort liability [3].

2. Security obligation in universities

2.1. Statutory security obligation in universities

Universities have the right to educate and manage students, but also undertake the obligation of protecting students. Universities which cause injuries to students because of failing to fulfill the obligation required by law and regulations should shoulder civil responsibilities according to law, which is the statutory security obligation in universities. The detailed content is as follows [4] :

Obligation to provide reasonable living standard, teaching facilities, equipments and sufficient security protection

Teaching and living facilities in school include school buildings, walls, roads, ground, sport equipment, electric power and fire-fighting equipments. As regulated in the clause 9 of Measures for the Handling of Student Injury Accidents: "The school should undertake corresponding responsibilities for injuries to students caused by the following reasons: (A) School building, ground, other public facilities and learning materials, teaching equipments and living facilities fail to meet the national standard or have obvious insecurity factors; (B) School security, fire control and equipments and facility management system have obvious careless omission or management confusion, major source of hidden danger without taking timely measures....." This clause shows the significance of schools to provide teaching and living facilities conforming to safety standard; to set obvious warning signs and take corresponding security measures for dangerous teaching and living equipments and facilities; and to make regular check and protect, take warning measures, repair or replace equipments and facilities have the source of hidden danger.

Obligation to take care of students suffering from emergent disease and injuries

According to clause 9 of Measures for Handling Student Injury Accidents: "Schools should undertake corresponding responsibilities by law for injuries to students caused by the following reasons: "... (H) The school fails to take timely measures about emergent diseases or injuries in school and cause worsen consequences;..." This clause shows it is the student rather than school that should undertake the tort liability for personal damage accidents due to the above reasons. But if the accident happened in the school, which misconducts and fails to take fully educational and management responsibility and to take effective measures to control the accidents which happen suddenly, it is the school that should undertake corresponding tort liability.

2.2. Non-Statutory security obligation in universities

Statutory security obligation is established based on laws and regulations, but it is only a small part of social necessary security obligations. Non-statutory security obligation, which develops from case laws and theories, refers to necessary security obligation to respect others in daily life. It has not developed to statute law, so it is represented as contractual security obligation and security obligation developed from habits [5]:

Obligation of food safety control

According to clause 9 of Measures for the Handling of Student Injury Accidents: "Schools should undertake corresponding responsibilities by law for injuries to students caused by the following reasons: "... (C) Medicine, food, drinking water provided by schools to students is unconformable to national or industrial standard and requirements;" . When selecting products and service related to students' study and life, schools should choose those products and service whose quality and safety performance conform to relative standard and requirements. If schools provide food, medicine and drinking water which do not reach the national standard and cause potential dangers to personal safety and injuries to students, schools should undertake tort liability by law.

Obligation of reasonable and sanitary dorm facilities

It is embodied in dorm agreement signed by universities and students that Universities should not only provide students with dorms meeting the standard of national building standard, but also should provide them with reasonable dorm health service. University logistics should provide public health service to students, but also make effective monitoring about the dorm cleanness so as to enable students live in clean and comfortable environment. Universities should take corresponding responsibilities if students suffer from personal injury or asset damage in dorms due to poor management or monitoring by university logistics.

Obligation of safe student activities

According to clause 9 of Measures for Handling Student Injury Accidents: “Schools should undertake corresponding responsibilities by law for injuries to students caused by the following reasons: “... (D) School organizes students to take part in educational and teaching activities or out-of-school activities without giving relative safety education to them and making necessary safety precautions within foreseeable range; ...”. This clause shows that schools are also responsible for giving relative safety education to students such as management, education etc when organizing them to participate in out-of-school activities and taking necessary security defense measures.

3. Tort Liability for violation of security obligation of universities

3.1. Nature of responsibility for violation of security obligation of universities

Essentially, civil liability caused from violation of security obligation of universities belongs to tort liability. But since damages happen in the process or place where services are provided, students can ask the school to undertake the liability for breach of contract; also can ask the school to undertake the tort liability for violation of security obligation. From the perspective of the protection of the injured party, it is allowable for the injured party to select to undertake the liability for breach of contract or the tort liability.

3.2. Form of responsibility for violation of security obligation of universities

According to regulations of clause 6 and 7 of Tort Liability Law, imputation principle for violation of security obligation of universities can be divided into fault principle, doctrine of presumption and principle of liability without fault. [6]

Fault responsibility

Universities should undertake liability for damage when students' life, health and body right are infringed due to breach of educational and management responsibility of universities without the intervention of the third party. If students are aggrieved in universities by the third party, then universities bear no responsibility for them. If there is no third party or the third party is unable to undertake the responsibility, then it is universities that should bear appropriate supplementary liability. If students also to be blame for the infringement, then universities can ask to alleviate or exempt liability based on the fault-balance principle of tort law.

Fault presumed responsibility

It is universities that should undertake fault presumed responsibilities for school tort cases due to the following reasons:

- Construction in universities
- Damage caused by collapse, falling and drop of objects and hangers placed in office building, teaching building and dorms
- Damage caused by personal reasons of students. We should judge whether universities have fulfill the obligation of security based on security obligation theory, if no, then universities should undertake fault presumed responsibility.

Liability without fault

Campus tort disputes are always connected to cases such as product responsibility tort, objects infringement, domesticated animal infringement and medical damage infringement, which will cause concurrence of fault responsibility and liability without fault. Based on regulations in General Principles of The Civil Law and Tort Liability Law, universities should undertake liability without fault for campus torts cases caused by the following reasons:

- Tort caused by dangerous teaching facilities, food, drinking water, medicine and other objects provided by universities to students and unreasonable danger injurious to students' personal safety
- Campus tort caused by high-risk operation of school
- Campus tort caused by environmental pollution.

In the above situations, there is not necessary for injured students to prove the fault of universities, which can not get avoid from liability by proving the innocence. Whether universities should undertake responsibilities is determined by the

causal relationship between campus torts and the damages. Of course universities can get exemption from liability by proving the fault of the third party or force majeure.

It is possible to analyze the campus tort liability by incorporating university behaviors into existing law framework if we discuss the university tort cases from the perspective of security obligation. By doing this, we can prevent from contradiction upgrading between universities and students when infringement disputes happen, and we can also provide strong evidence for the governance of university and rights protection of students [7].

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